



Commonwealth of Pennsylvania
Milk Marketing Board
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Official General
Order No. A-965

Posted: September 2, 2009
Effective: September 8, 2009

**ORDER ESTABLISHING THE RELATIONSHIP BETWEEN BUTTERFAT
RANGES, PRODUCT DESCRIPTIONS AND RESALE PRICES OF
PRICE-CONTROLLED PACKAGED MILK PRODUCTS**

NOW, this 2nd day of September 2009, the Commonwealth of Pennsylvania, Milk Marketing Board (Board) adopts and issues this official general order pursuant to the authority conferred by the Milk Marketing Law, 31 P.S. §§ 700j-101 – 700j-1204. This order will become effective at 12:01 a.m. on September 8, 2009.

**SECTION I
SCOPE; INCORPORATION**

(a) This official general order governs the labeling, fat content, and related prices for all resale price-controlled milk products sold in Pennsylvania.

(b) The attached Findings of Fact and Conclusions of Law are incorporated herein by this reference as though fully set forth in this Order.

**SECTION B
DEFINITIONS**

The following words and terms have the meanings set forth in this section unless the context clearly indicates otherwise.

Price-Controlled Packaged Milk Product – Those products for which the Board establishes a resale price and as listed on Schedules I and II of the governing orders for each Milk Marketing Area.

Butterfat Range – Range of fat content for a price-controlled packaged milk product expressed in terms of a percentage as referenced in Schedules I and II of the governing orders for each Milk Marketing Area.

Product Description – Written representation or category of a price-controlled packaged product as referenced in Schedules I and II of the governing orders for each Milk Marketing Area.

SECTION C
PRICES RELATED TO PRODUCT DESCRIPTIONS
AND BUTTERFAT RANGES

(a) Where a product description generally meets the description on the label of a resale price-controlled packaged milk product, the resale prices in each Milk Marketing Area associated with that product shall apply.

(b) Where the actual butterfat content of a product produced or sold by a milk dealer or store is above or below the butterfat range listed on Schedule I or II of the governing orders for each Milk Marketing Area, the prices associated with that product description shall apply regardless of the butterfat range listed on Schedules I and II.

SECTION D
SEVERABILITY

If any section, provision, subsection, paragraph or clause of this Order is determined to be unconstitutional or otherwise contrary to law, the remainder of the Order shall be given effect as though that section, provision, subsection, paragraph or clause has not been included.

PENNSYLVANIA MILK MARKETING BOARD

Richard Kriebel, Chairman

Luke F. Brubaker, Member

Barbara A. Grumbine, Consumer Member

Date: September 2, 2009

**FINDINGS OF FACT AND CONCLUSIONS OF LAW
BUTTERFAT RANGE AND PRODUCT DESCRIPTION HEARING
AUGUST 5, 2009**

FINDINGS OF FACT

1. On August 5, 2009, the Pennsylvania Milk Marketing Board (Board) convened a hearing for all Milk Marketing Areas to receive testimony and evidence concerning butterfat ranges and how they relate to product descriptions of price-controlled packaged milk products.
2. Notice of the hearing was published at 39 Pennsylvania Bulletin 3147 on June 20, 2009, and was mailed to those who have requested mailed notice of Board hearings by means of Bulletin No. 1449, dated June 5, 2009.
3. Ann Asbury testified on behalf of Board Staff as an expert in milk cost accounting. Ms. Asbury testified that at least two milk dealers were selling a mixed milk (half and half) product that contained little or no butterfat. Because the butterfat range for mixed milk minimum resale prices falls between 6.01 percent and 17.99 percent, those dealers could sell the product at the nonfat milk price. Ms. Asbury testified that the additional ingredients used to manufacture the nonfat mixed milk made the cost of it comparable to traditional mixed milk.
4. Ms. Asbury testified that the presence of the nonfat mixed milk could be disruptive to the marketplace. As an example, Ms. Asbury described a situation where a dealer bidding on a prison contract could price the nonfat mixed milk portion of a bid at the lower nonfat milk price, thus winning the contract at a lower price, even though that dealer's costs would be about the same as all other dealers in the bid. Board Staff is concerned that it would have questionable ability to enforce the mixed milk price in such a situation. Ms. Asbury recommended that the Board adjust the butterfat range to account for nonfat mixed milk in the mixed milk prices.
5. The Board finds that the butterfat range for mixed milk should be adjusted to account for nonfat mixed milk in the mixed milk prices in each Milk Marketing Area. In so finding, the Board finds Ms. Asbury's testimony credible and persuasive. The Board is concerned about the potential for market disruption and inconsistency in pricing if nonfat mixed milk is not included in mixed milk prices.

CONCLUSIONS OF LAW

1. The August 5, 2009, hearing regarding butterfat ranges and how they relate to product descriptions was held pursuant to the authority granted to the Board in sections 801 and 803 of the Milk Marketing Law (Law), 31 P.S. §§ 700j-801 and 700j-803.
2. The hearing was held following adequate notice and all interested parties were given a reasonable opportunity to be heard.
3. In accordance with this order, the butterfat range of mixed milk shall be 0.00 percent to 17.99 percent.
4. In adopting this order, the Board considered the entire record and concludes that the order is supported by a preponderance of credible evidence and is reasonable and appropriate under sections 801 and 803 of the Law.
5. The attached order may be amended pursuant to the procedures set out in section 801 of the Law.

PENNSYLVANIA MILK MARKETING BOARD

Richard Kriebel, Chairman

Luke F. Brubaker, Member

Barbara A. Grumbine, Consumer Member

Date: September 2, 2009

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